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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA

5 v.

15 CR 854 (SHS)
Plea

6 LESSAGE JEAN BAPTISTE

7 Defendant

8 -----x

9 New York, N.Y.
10 October 19, 2018
11 2:15 p.m.

12 Before:

13 HON. SIDNEY H. STEIN

District Judge

14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
17 Southern District of New York

18 JACOB E. WARREN

Assistant United States Attorney

19 MYERS SINGER & GALIARDO LLP

20 Attorney for Defendant

21 MATTHEW D. MYERS

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1 (Case called)

2 DEPUTY CLERK: Counsel, please state your name for the
3 record.

4 MR. WARREN: Good afternoon, your Honor.

5 Jacob Warren for the United States.

6 THE COURT: Good afternoon.

7 MR. MYERS: Matthew Myers for Mr. Jean Baptiste.

8 THE COURT: Good afternoon. And the defendant is
9 present.

10 Mr. Myers, do you have an application, sir?

11 MR. MYERS: Yes, Judge. At this time, my client
12 authorizes to enter a plea of guilty to Count Six of indictment
13 (S5) 15 CR 854. I reviewed the agreement yesterday and today
14 with my client.

15 THE COURT: Let me first -- we'll do it separately.
16 First, I will -- well, let me ask the parties. Shall I arraign
17 him first on (S5), he will enter a plea of not guilty, and then
18 he will change the plea?

19 MR. MYERS: Mere formality, but yes, go ahead, your
20 Honor.

21 MR. WARREN: Yes, please, your Honor.

22 THE COURT: All right. Fine.

23 Mr. Jean Baptiste, what is your full name, sir?

24 THE DEFENDANT: Lessage Jean Baptiste.

25 THE COURT: Mr. Baptiste, have you received a copy of

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1 superseding indictment (S5) 15 CR 854?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Did you read it?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did you discuss it with your attorney?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did he answer your questions?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: How do you plead at this time to the
10 superseding indictment (S5)? Guilty or guilty.

11 THE DEFENDANT: Not guilty, sir.

12 THE COURT: I accept that plea.

13 Now, Mr. Myers, you're indicating that your client
14 wants to switch the plea; is that correct?

15 MR. MYERS: That's correct, after careful
16 consideration and discussions with the prosecution, he
17 authorized me to enter a plea of guilty to Count Six, narcotics
18 conspiracy to cover this same indictment.

19 THE COURT: Now, let me ask the government: Is the
20 document I have on my desk here that's signed identical to the
21 version that was forwarded to my chambers earlier in the week?

22 MR. WARREN: Yes, your Honor. This was the agreement
23 that we sent your chambers last night, I believe, approximately
24 5:30 p.m., your Honor.

25 THE COURT: It's identical except for the fact that

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1 it's signed?

2 MR. WARREN: Yes, your Honor.

3 THE COURT: Swear the defendant in, please.

4 Administer the oath.

5 (Defendant sworn)

6 DEPUTY CLERK: Please state your name and spell your
7 name for the record.

8 THE DEFENDANT: My name is Lessage Jean Baptiste.
9 First name L-E-S-S-A-G-E. Last name J-E-A-N-B-A-P-T-I-S-T-E.

10 THE COURT: Mr. Jean Baptiste, do you understand that,
11 sir, that you are now under oath, and if you answer any of my
12 questions falsely, your false or untrue answers may later be
13 used against you in another prosecution for perjury or for
14 making a false statement?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: How old are you, sir?

17 THE DEFENDANT: I'm 37, sir.

18 THE COURT: How old?

19 THE DEFENDANT: 37.

20 THE COURT: 37. How far did you go in school, sir?

21 THE DEFENDANT: I graduated high school, sir.

22 THE COURT: Are you able to read, write, speak and
23 understand English?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you now or have you recently been

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1 under the care of a doctor or a psychiatrist?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you ever been treated or hospitalized
4 for any mental illness or any type of addiction, including drug
5 or alcohol addiction?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: When was that?

8 THE DEFENDANT: This is back in 2011, I went to a drug
9 treatment program.

10 THE COURT: Residential?

11 THE DEFENDANT: Outpatient, sir.

12 THE COURT: All right. And anything since then?

13 THE DEFENDANT: No, sir.

14 THE COURT: In the past 24 hours, have you taken any
15 drug, medicine, or pills or have you consumed any alcohol,
16 alcoholic beverage?

17 THE DEFENDANT: No, sir.

18 THE COURT: Is your mind clear today?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you feeling all right?

21 THE DEFENDANT: I feel good, sir.

22 THE COURT: Do you have an attorney here?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Who is that?

25 THE DEFENDANT: Mr. Matthew Myers.

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1 THE COURT: Mr. Myers, do you have any doubt as to
2 Mr. Jean Baptiste's competence to plead at this time?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: Now, you heard your attorney tell me a
5 moment ago that you wish to plead guilty. Do you wish to enter
6 a plea of guilty, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have you had a complete opportunity to
9 discuss your case with Mr. Myers and to discuss the
10 consequences of entering a plea of guilty?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are you satisfied with Mr. Myers and his
13 representation of you?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: On the basis of Mr. Jean Baptiste's
16 responses to my questions and my observations of his demeanor
17 as he stands here before me, I make the finding that he is
18 fully competent to enter a plea at this time.

19 Before I accept a plea from you, sir, I'm going to be
20 asking you certain questions. My questions are intended to
21 satisfy me that you wish to plead guilty because you are
22 guilty, and that you fully understand the consequences of
23 entering a plea of guilty.

24 I'm going to be describing to you certain rights you
25 have under the laws and the Constitution of the United States.

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1 You are going to be giving up those rights if you enter a plea
2 of guilty.

3 Please listen to me carefully, and if you do not
4 understand anything I'm saying or anything I'm describing,
5 please stop me, and you can ask me anything you want. You can
6 ask Mr. Myers anything you want at any time. Do you understand
7 that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: I want to make sure that you understand
10 what I'm asking you and understand what I'm saying to you.

11 Under the Constitution and laws of the United States,
12 sir, you have a right to a speedy and public trial by a jury on
13 the charges against you which are contained in indictment (S5)
14 15 CR 854. Do you understand those rights?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: If there were a trial, you would be
17 presumed innocent, and the government would be required to
18 prove you guilty by competent evidence and beyond a reasonable
19 doubt. You would not have to prove that you were innocent at a
20 trial. Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: If there were a trial, a jury composed of
23 12 people selected from this district would have to agree
24 unanimously that you were guilty. Do you understand those
25 rights?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: You have a right to be represented by an
3 attorney at the trial of this action and indeed at every stage
4 of the proceedings. If you cannot afford an attorney, an
5 attorney will be given to you at no cost to you. Do you
6 understand those rights?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: If there were a trial, you would have a
9 right to see and hear all of the witnesses against you. Your
10 attorney could cross-examine them. YOU would have a right to
11 have your attorney object to the government's evidence, and you
12 would have the right to have your attorney offer evidence on
13 your behalf if you wished, and you would also have the right to
14 have subpoenas issued or other compulsory process used to
15 compel witnesses to come into court and to testify on your
16 behalf. Do you understand these rights?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: If there were a trial, you would have the
19 right to testify if you wanted to, but no one could force you
20 to testify if you did not want to. In addition, no inference
21 or suggestion of guilt could be drawn if you decided not to
22 testify at trial. Do you understand those rights?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that by entering a plea
25 of guilty today, you're giving up each and every one of the

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1 rights I've described, you're waiving those rights, and that
2 you will have no trial?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand that you have the right
5 to change your mind right now, Mr. Jean Baptiste, and decline
6 to enter a plea of guilty. You don't have to enter a plea of
7 guilty if you do not want to for any reason whatsoever. Do you
8 understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have you received a copy of indictment
11 (S5) 15 CR 854?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you told me earlier you read it,
14 right?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And you discussed it with your attorney,
17 correct?

18 THE DEFENDANT: Correct, sir.

19 THE COURT: You have the right to have me read that to
20 you in open court, the entire superseding indictment. If you
21 don't want me to read it, I won't. If you do want me to read
22 it, I will. What's your pleasure, sir?

23 THE DEFENDANT: You don't have to, sir.

24 THE COURT: I accept that as a knowing and voluntary
25 waiver to have the indictment read in open court.

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1 Do you understand that in Count Six,
2 Mr. Jean Baptiste, you're charged with from 2008 until February
3 of 2017 conspiring to distribute and possess with intent to
4 distribute 280 grams and more of cocaine base, a detectable
5 amount of heroin and a detectable amount of marijuana. Do you
6 understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand that if you do not plead
9 guilty, the government would have to prove each and every part
10 or element of the charge in the indictment beyond a reasonable
11 doubt at a trial?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Government, set forth the elements of
14 Count Six that the jury would have to find were met beyond a
15 reasonable doubt before they could convict Mr. Jean Baptiste of
16 Count Six.

17 MR. WARREN: Yes, your Honor.

18 First, that two or more persons entered the unlawful
19 agreement charged in Count Six of the indictment; and here,
20 that is a conspiracy to possess with the intent to distribute
21 mixtures and substances containing a detectable amount of 280
22 grams or more of mixtures and substances containing a
23 detectable amount of cocaine base, and as well as mixtures and
24 substances containing a detectable amount of heroin and a
25 detectable amount of marijuana.

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1 And the second element, your Honor, that the defendant
2 intentionally and knowingly joined the conspiracy.

3 THE COURT: Do you understand, Mr. Jean Baptiste, that
4 the maximum possible penalty of the crime to which you are
5 entering a plea of guilty is life in prison followed by a term
6 of supervised release of life, plus a maximum fine of the
7 greatest of \$10 million or twice the gross pecuniary gain
8 derived from the offense or twice the gross pecuniary loss to
9 individuals other than you resulting from the offense, plus a
10 \$100 mandatory special assessment?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And that's because the charge against you
13 in Count Six is for violation of 21 U.S.C. 841(b)(1)(A) and
14 841(b)(1)(C) and 841(b)(1)(D). Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, I used the term supervised release.
17 That means you're going to be subject to monitoring upon your
18 release from prison, and that monitoring is to be under terms
19 and conditions that could lead to your reimprisonment without a
20 jury trial for all or part of the term of supervised release
21 and without credit for time previously served on post release
22 supervision if you violate any term or condition of supervised
23 release.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, I also can order restitution to

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1 anyone injured as a result of your criminal conduct. Do you
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And I also have the authority to order
5 forfeiture of any of the proceeds of the criminal activity you
6 engaged in. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, I told you what the maximum was under
9 the statute, but the particular statute to which you are
10 entering a plea of guilty for, sir, also contains a mandatory
11 minimum penalty. In other words, I have to sentence you to the
12 mandatory minimum or above unless under very limited
13 circumstances not applicable here are complied with, and the
14 mandatory minimum on Count Six is a mandatory minimum sentence
15 of prison of ten years' imprisonment, plus a mandatory minimum
16 term of supervised release of five years. Do you understand
17 that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, if I accept your guilty plea and
20 determine that you're guilty of Count Six, that determination
21 by me, sir, will deprive you of such valuable civil rights as
22 the right to vote, the right to hold public office, the right
23 to serve on a jury, and the right to possess any kind of
24 firearm. Do you understand that?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Mr. Myers, is your client a United States
2 citizen?

3 MR. MYERS: Yes, Judge.

4 THE COURT: Under current law, Mr. Jean Baptiste,
5 there are Sentencing Guidelines that judges such as myself must
6 utilize in applying the factors set forth in 18 U.S.C. 3553(a)
7 to determine what an appropriate sentence is in your case.

8 Have you talked to Mr. Myers about the Sentencing
9 Guidelines?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand I won't be able to
12 determine what the relevant guideline sentence is until after I
13 receive a presentence report that's going to be compiled by the
14 probation office. Do you understand that?

15 THE DEFENDANT: Yes, I understand.

16 THE COURT: And you are going to be interviewed by the
17 probation department. They're going to ask you a variety of
18 questions about yourself, your upbringing, your education,
19 crime, the crime itself and so forth. Mr. Myers will have a
20 right to be there. Please give them accurate and complete
21 information.

22 Once that report comes out, you and Mr. Myers and the
23 government will all have an opportunity to object to any of the
24 findings of fact there; and if you do or the government does
25 file objections, I then will adjudicate those objections and

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1 decide what the appropriate findings of fact are. Do you
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: So I will determine what the appropriate
5 guideline range is based on that probation report and any other
6 submissions of the parties, but even after I determine what the
7 appropriate guideline range is, I have the ability to impose a
8 sentence based on a departure from the guidelines. In other
9 words, I could go above the guideline range, I can go below the
10 guideline range based on a departure from the guidelines if I
11 feel there are grounds to do so. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And even after I do that, I then must
14 apply all of the factors in 18 United States Code, Section
15 3553(a) to determine what a reasonable and appropriate and fair
16 sentence is and one that's not greater than necessary to meet
17 the ends of the criminal justice system. Do you understand
18 that process of sentencing, Mr. Jean Baptiste?

19 THE DEFENDANT: Yes, I do, sir.

20 THE COURT: Do you understand that you are going to be
21 sentenced to prison, and the system of parole that used to
22 exist in the federal criminal justice system no longer exists.
23 You will not be released any earlier on parole. You will serve
24 your full sentence. Do you understand that?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Now, if when you're sentenced, sir, you
2 decide that that's not the sentence you expected or it's not
3 the sentence Mr. Myers told you you would receive or the
4 government said you'd receive or might receive or could
5 receive, and if it is different from any of that, and different
6 from anything you thought it was going to be, you nonetheless
7 are going to be bound to this guilty plea, sir, and you won't
8 be allowed to withdraw it. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, I'm going to ask my deputy to mark
11 this document in my hands as Government Exhibit No. 1. It's a
12 seven-page document dated October 18. It's addressed to your
13 attorney, and it's signed by Lauren Schorr and another
14 Assistant United States Attorney.

15 I'm going to ask my deputy to mark it, and I'm asking
16 her to show you the last page on that document. I'll refer to
17 that, sir, as the plea agreement.

18 Is that your signature on the last page
19 Mr. Jean Baptiste?

20 THE DEFENDANT: Yes, it is, your Honor.

21 THE COURT: Did you read that document before you
22 signed it?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did you understand it before you signed
25 it?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Did you discuss it with Mr. Myers before
3 you signed it?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Does that letter agreement constitute your
6 complete and total understanding of the entire agreement
7 between the government, Mr. Myers and yourself?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Did you read it when you signed it?

10 THE DEFENDANT: Yes, I did.

11 THE COURT: Is everything about your plea and sentence
12 contained in that agreement?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Are there any side deals I should know
15 about?

16 THE DEFENDANT: No, sir.

17 THE COURT: Has anyone offered you any inducements or
18 threatened you or forced you to either plead guilty or to enter
19 into the plea agreement?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you understand that in this plea
22 agreement, you've admitted the forfeiture allegation in the
23 indictment, and you've agreed to forfeit to the United States
24 all property constituting or derived from any proceeds you
25 obtained as a result of the conspiracy alleged in Count Six?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand that you are giving up
3 your right to attack the sentence, and you're giving up your
4 right to collaterally attack the sentence --

5 THE DEFENDANT: Yes, sir.

6 THE COURT: -- if I sentence you to 188 months in
7 prison or fewer months. Do you understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that you are waiving
10 your right to assert the statute of limitations as a defense to
11 this action?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Myers, are you aware of any valid
14 defense that would prevail at trial or know of any reason why
15 Mr. Jean Baptiste should not be permitted to plead guilty?

16 MR. MYERS: No, your Honor.

17 THE COURT: In your view, sir, is there an adequate
18 factual basis to support this plea?

19 MR. MYERS: Yes, Judge.

20 THE COURT: Government, is there an adequate factual
21 basis in the view of the government to support the plea?

22 MR. WARREN: Yes, your Honor.

23 THE COURT: Mr. Jean Baptiste, tell me now what you
24 did in connection with your plea of guilty to Count Six with
25 this superseding indictment (S5).

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1 (Counsel and defendant consult)

2 THE DEFENDANT: I conspired with others, your Honor.

3 THE COURT: I'm sorry?

4 THE DEFENDANT: I conspired with others to distribute.

5 THE COURT: Well, when you say you conspired with
6 others, what do you mean? Did you enter into an agreement with
7 somebody else?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And that was to distribute what?

10 THE DEFENDANT: Cocaine, crack cocaine, sir.

11 THE COURT: Crack and what else?

12 THE DEFENDANT: Weed and heroin.

13 THE COURT: Is weed marijuana?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And what else?

16 THE DEFENDANT: And heroin.

17 THE COURT: Heroin. All right.

18 Where was this distribution? What county?

19 THE DEFENDANT: County of the Bronx, New York.

20 THE COURT: Did it last from approximately 2008 until
21 approximately 2017?

22 THE DEFENDANT: Just about, sir.

23 THE COURT: Did you take any steps in connection with
24 your agreement?

25 THE DEFENDANT: Can you repeat that?

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1 THE COURT: What did you do in connection with
2 distributing heroin, marijuana or crack?

3 THE DEFENDANT: I sold in my neighborhood, sir.

4 THE COURT: You sold it?

5 THE DEFENDANT: Sold it, sir.

6 THE COURT: All right.

7 When you did these things, sir, did you know that what
8 you were doing was wrong and illegal?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: What evidence does the government have
11 against this defendant?

12 MR. WARREN: Your Honor, the government would present
13 at trial seizures from Mr. Jean Baptiste personally of --

14 THE COURT: Personally.

15 MR. WARREN: Yes.

16 THE COURT: In other words, it was on himself?

17 MR. WARREN: Yes, your Honor.

18 THE COURT: All right.

19 MR. WARREN: As well as testimony from cooperating
20 witnesses who personally bought drugs from Mr. Jean Baptiste.
21 The seizures and all the purchases occurred in and around Beach
22 Avenue, which is in the Bronx, your Honor.

23 THE COURT: And what drug did he have on him when he
24 was arrested?

25 MR. WARREN: The seizures were crack cocaine, your

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1 Honor.

2 THE COURT: And you have testimony of cooperators in
3 regard to the other drugs?

4 MR. WARREN: Yes. Yes, your Honor. As well as
5 seizures of the other drugs from Mr. Jean Baptiste's
6 co-conspirators.

7 THE COURT: Mr. Jean Baptiste, how do you now plead to
8 the charge in indictment (S5) 15 CR 845? Guilty or not guilty.

9 THE DEFENDANT: Guilty, sir.

10 THE COURT: Are you pleading guilty because you are
11 guilty?

12 THE DEFENDANT: I'm pleading guilty because I am
13 guilty, sir.

14 THE COURT: Are you pleading guilty voluntarily and of
15 your own free will?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Myers, do you want me to adduce
18 anything else on the allocution?

19 MR. MYERS: No, Judge. Those seizures were part of
20 our suppression hearing, just for clarity purposes, we had two
21 suppression hearings. That's the sum and substance of what
22 they got off of Jean Baptiste.

23 THE COURT: Thank you.

24 Government, do you wish any further questions?

25 MR. WARREN: No, your Honor. Thank you.

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1 THE COURT: Mr. Jean Baptiste, because you acknowledge
2 you are guilty as charged in Count Six, because I find you know
3 your rights and are waiving them knowingly and voluntarily,
4 because I find your plea is entered into knowingly and
5 voluntarily, and is supported by an independent basis in fact
6 containing each of the elements of the offense, I accept your
7 guilty plea, and I determine you to be guilty of Count Six of
8 this indictment.

9 I'm setting a date for sentencing of January 31 at
10 2:30 p.m.

11 Is there anything else? Government?

12 MR. WARREN: No, your Honor. Thank you.

13 THE COURT: Mr. Myers?

14 MR. MYERS: Nothing further, Judge.

15 THE COURT: Mr. Jean Baptiste, I'll see you on
16 January 31 at 2:30 or any adjourned date that I set.

17 Thank you, sir.

18 THE DEFENDANT: Thank you, sir.

19 (Adjourned)
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22
23
24
25